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 6

7 **UNITED STATES DISTRICT COURT**
 8 **DISTRICT OF ARIZONA**

9
 10 United States of America,

11 Plaintiff,

12 v.

13 Daniel David Rigmaiden, et al.,

14 Defendant.
 15

No. CR08-814-PHX-DGC

SUBMISSION OF TRANSCRIPT OF
 EVIDENCE RELEVANT TO
 UNSUPPORTED FINDINGS RE:
 INTERLOCUTORY APPEAL OF
 PORTION OF COURT'S ORDER (Dkt.
 #1009) DENYING Dkt. #847 AND Dkt.
 #927

[F.R.A.P. 10(b)(2)]

16 Defendant, Daniel David Rigmaiden, appearing *pro se*, hereby submits this transcript
 17 of evidence relevant to unsupported findings made by the district court in its May 8, 2013
 18 order at Dkt. #1009. This transcript is submitted pursuant to F.R.A.P. 10(b)(2) in reference to
 19 the defendant's interlocutory appeal from the portion of the district court's order at Dkt.
 20 #1009 denying the defendant's motions at Dkt. #847 and #927.

21 The district court's unsupported factual findings at Dkt. #1009 are as follows:

22 [T]he government states that the prosecution team consulted with "a
 23 representative of the U.S. Attorney's Office for the Northern District of
 [California] who assisted in the preparation of the search warrants" to
 24 determine the proper interpretation of the [computer search] protocol...

...
 25 As noted above, the government sought guidance concerning the
 meaning of the [computer search] protocol from the U.S. Attorneys' Office in
 26 the Northern District of California... [AUSA Battista's] interpretation applie[s]
 in the Northern District of California, where the protocol was created...

....
 27 It sought the advice of the Northern District of California concerning
 28 interpretation of the protocol...

The government obtained the Amended Warrant, and later sought and relied on legal advice from the Northern District of California in interpreting the deadlines set forth in the Computer Search Protocol...

Court's May 8, 2013 Order (Dkt. #1009, p. 38, 40-41, 45 & 49 (second alteration on Court's order)).

Therefore, the district court found **(1)** the government in Arizona contacted the USAO of the Northern District of California in order to obtain its interpretation of the "Computer Search Protocol For The Northern District Of California," as it is applies in the Northern District of California, and **(2)** the Arizona agents and AUSA Battista's interpretation of the "Computer Search Protocol For The Northern District Of California" is precisely the same as how the protocol is interpreted in the Northern District of California.

The above findings were based solely on a statement given by the lead prosecutor (*i.e.*, AUSA Frederick A. Battista) in his motion at Dkt. #986, and reiterated by him at the March 28, 2013 Motion Hearing. The district court did not base its findings on any evidence or case law but instead on the general *presumption of honesty* applied to all federal prosecutors who practice law in his courtroom.

Evidence rebutting the district court's findings, which were based on an implied finding of a *presumption of honesty* applied to prosecutors, is contained in the September 22, 2011 Motion Hearing transcript and in the March 28, 2013 Motion Hearing transcript. By comparing AUSA Battista's clear statements made at the two hearings, it is evident that AUSA Battista is willing to make **false claims** to the district court for the purpose of winning whatever argument that suits the government's interests at the time:

Statement Made By AUSA Battista On September 22, 2011

[THE COURT:] Mr. Rigmaiden has been arguing that the government was using a StingRay produced by Harris. This document seems to support that.

MR. BATTISTA: Let me respond to that, Your Honor.

THE COURT: Yeah, please.

...

[MR. BATTISTA:] In the law enforcement world, there's a StingRay and then there's the generic term "StingRay" meaning all types of devices. The five case agents were using the term "StingRay" as the term "Kleenex." They did not operate the equipment. **They did not know what the equipment is.**

1 They didn't receive any training on the equipment.

2 ...None of the five investigators know the make, model, manufacturer of
3 the exact equipment. There were tech agents out there. They're the ones who
4 possessed the equipment, operated the equipment.

5 ...They don't know. It could be a StingRay. It could not be. It could be
6 something else. **They didn't know what it was. They didn't see it...**

7 *September 22, 2011 Motion Hearing, Partial Transcript of Proceedings*, p. 35-
8 36 (emphasis added).

9 **Statement Made By AUSA Battista On March 28, 2013**

10 [THE COURT:] All right. A couple other questions, Mr. Battista. Mr.
11 Rigmaiden has argued that there is no evidence in this case that the warrant,
12 Document 330, or Order 330, was used in the process of the mobile tracking
13 device operation, was in the hands of the agents or was actually giving them
14 guidance in the process. What is your response to that?

15 MR. BATTISTA: Your Honor, obviously the government is not willing
16 to disclose the identity of the technical agents, but **there are witnesses who**
17 **have observed the technical agents doing their activities** and can hearsay the
18 fact that they personally have spoken to the technical agents, and the technical
19 agents were provided a copy of the order and reviewed the order....

20 So the government, through -- if the Court needs it, the government is
21 prepared through hearsay testimony to say that the agents had been spoken to,
22 they were provided a copy of the warrant, they did review the warrant, **they**
23 **were observed operating the equipment**,...

24 *March 28, 2013 Motion Hearing Transcript*, p. 67-68 (emphasis added).

25 The above evidence of AUSA Battista's general dishonesty—in relation to key issues
26 presented to the court—is also direct evidence rebutting the district's court's *presumption of*
27 *honesty* applied to AUSA Battista's unsubstantiated claim that **(1)** he received guidance from
28 the USAO in the Northern District of California in interpreting the “Computer Search
Protocol For The Northern District Of California,” and **(2)** his interpretation and the Arizona
agents' interpretation of the protocol is the same as the interpretation applied in the Northern
District of California.

Therefore, pursuant to F.R.A.P. 10(b)(2), the defendant submits the following
transcript of evidence relevant to the district court's unsupported findings relevant to the
defendant's interlocutory appeal:

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1 1. **Evidence Item No. 1:** *Pages 35-36 of the September 22, 2011 Motion*
 2 *Hearing, Partial Transcript of Proceedings.*

3 2. **Evidence Item No. 2:** *Pages 67-68 of the March 28, 2013 Motion Hearing*
 4 *Transcript.*

5 * * * * *

6 This transcript of evidence was drafted by the *pro se* defendant, however, he
 7 authorizes his shadow counsel, Philip Seplow, to sign and file this transcript on his behalf
 8 using the ECF system.

10 DANIEL DAVID RIGMAIDEN, Pro Se
 11 Defendant:

12 s/ Daniel Rigmaiden

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Respectfully Submitted:

PHILP SELOW, Shadow Counsel, on
behalf of DANIEL DAVID RIGMAIDEN,
Pro Se Defendant:

s/ Philip Seplow

Philip Seplow

Shadow Counsel for Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on:

I caused the attached document to be

electronically transmitted to the Clerk's Office using the ECF system for filing and
transmittal of a Notice of Electronic Filing to the following ECF registrants:

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(Authorized agent of Philip A. Seplow, Shadow Counsel for Defendant; See ECF Proc. I(D) and II(D)(3))